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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 58th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 12 November 1990, at 10.30 a.m.

Chairman: Mr. VOYAME

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-13732/8363A

The meeting was called to order at 10.35 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared the session open and welcomed the members of the Committee. Ms. Diaz Palacios, who was ill, had informed him that she would be unable to attend the session; he would request the secretariat to transmit to her the Committee's best wishes for a speedy recovery. Noting that Mr. Gil Lavedra would be unable to be present during the second half of the session, he stressed that a quorum was important for the proper conduct of the Committee's business and, in particular, for the adoption of its decisions.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/11)

2. The CHAIRMAN reminded the Committee that, under rule 9 of its rules of procedure, urgent and important items might be added to the agenda during the session.

3. The provisional agenda (CAT/C/11) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

4. The CHAIRMAN, introducing the Committee's draft programme of work, said that, in addition to its discussion of the items on its agenda, the Committee would be addressed by Mr. Martenson, Under-Secretary-General for Human Rights during the course of the session. He himself would report briefly at an appropriate point on the Second Meeting of Chairpersons of United Nations Human Rights Treaty Bodies held in October 1990. At the request of the authorities of Chile who would be unable to be represented at the present session, the consideration of the additional report of that country under agenda item 4, would be postponed until the Committee's sixth session.

5. The Committee's programme of work was adopted.

6. The CHAIRMAN reminded the Committee that country rapporteurs and their alternates for the present session had been designated at the Committee's 53rd meeting; he himself had subsequently designated Mr. Gil Lavedra and Ms. Diaz Palacios, and Mr. Sorensen and Ms. Chanet, as country rapporteurs and alternates for Ecuador and Finland, respectively; a complete list had been circulated to members.

7. Mr. SORENSEN said that, as a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, he was bound by the confidentiality of its findings. Having recently visited Turkey in that capacity, he said that he wished to be relieved of his functions as alternate country rapporteur for Turkey in the Committee against Torture and that he would take no part in the discussion of the initial report of that country under agenda item 4.

8. The CHAIRMAN said that, in the absence of Ms. Diaz Palacios, alternate country rapporteurs for Spain and Ecuador would have to be designated in her place for the present session. He suggested that Mr. Gil Lavedra, Ms. Chanet and Mr. Sorensen should be designated alternate country rapporteurs for Turkey, Spain and Ecuador, respectively.

9. It was so decided.

10. The CHAIRMAN suggested that, during the consideration of reports submitted by States parties, in the morning, the country rapporteur and his alternate should be the first to put questions to the representative of the State party, to be followed by the other members of the Committee. The same procedure would be followed for discussing the replies of the State party in the afternoon, but the country rapporteur would speak again at the end of the discussion in order to present conclusions and recommendations. The Chairman might add a few words if necessary.

11. Mr. SORENSEN said that the preparation of conclusions and recommendations was one of the Committee's most important and difficult tasks. It might therefore be advisable to give the country rapporteur time to prepare them so that he could present them, not immediately, but on the following day, when the representative of the State party concerned could return to hear them.

12. The CHAIRMAN agreed that time was needed for the preparation of conclusions and recommendations. However, the representative of the State party might not be able to return on the following day. It would therefore be better to complete the conclusions and recommendations on the day on which the report was considered. Otherwise, the State party might have to wait until the Committee's report was issued in order to know what its conclusions and recommendations were.

13. Mr. GIL LAVEDRA agreed with Mr. Sorensen's point. In order to prepare conclusions and recommendations, it was necessary to know the opinion of the entire Committee. Since many delegations might not be able to return on the following day, he suggested that the Committee might meet for a few minutes after the representative of the State party had withdrawn in order to discuss its conclusions and recommendations.

14. The CHAIRMAN said that the rules of procedure allowed the Committee to hold closed meetings. Nevertheless, he suggested that, in relatively straightforward cases, the Committee should proceed as it had done in the past and that, in other cases, at the request of the country rapporteur, it should postpone making its conclusions and recommendations until the next day and invite the representative of the State party to attend if he could. If he could not, a way would have to be found of transmitting the Committee's conclusions and recommendations to the State party promptly.

15. Mr. BRUNI (Secretary of the Committee) said that the conclusions and recommendations would be included in the summary records.

16. The CHAIRMAN pointed out that the summary records were not issued immediately. It might be possible to send the Committee's conclusions and recommendations to the delegation concerned in a separate document.

17. Mr. BRUNI (Secretary of the Committee) said that, in the light of what had been said, if the country rapporteur himself wished to draft a formal text, the secretariat could, without any difficulty, transmit it to the State party concerned immediately.

18. The CHAIRMAN said that he had been informed that the summary records were issued quite promptly, but he thought that it would be more effective to send a separate document immediately. Thus, the country rapporteur would either present his conclusions and recommendations immediately, and they would be

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included in the summary record, or he would present them, after a discussion with all members of the Committee, on the following day. It was to be hoped that, in the latter case the representative of the State party would be able to be present, but if he could not be, the State party would be notified in writing of the Committee's conclusions and recommendations. If he heard no objection, he would take it that the Committee wished to adopt that procedure.

19. It was so decided.

20. The CHAIRMAN reminded members of the confidentiality of documents communicated to them in connection with the Committee's functions under articles 20 and 22 of the Convention. No reference in public meetings to matters relating to those articles should make it possible to identify the State or States concerned.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (CAT/C/5, CAT/C/7, CAT/C/9 and CAT/C/11)

21. Mr. BRUNI (Secretary of the Committee) said that the eight States parties which had still not submitted their initial reports due in 1988 despite three notes verbales were Afghanistan, Belize, Bulgaria, Luxembourg, Panama, Togo, Uganda and Uruguay. Panama had stated that additional time was needed for the new Government to prepare its report. The initial reports of Guyana and Peru, due in 1989, had not yet been received. The initial reports of Algeria, Australia, Brazil, Guinea, Italy, Libyan Arab Jamahiriya, Poland, Portugal and the United Kingdom of Great Britain and Northern Ireland, due in 1990, had also not been received. The Permanent Mission of the United Kingdom in Geneva had informed the secretariat that its report was virtually complete and might be expected very shortly.

22. Of the five States parties (Austria, Denmark, Egypt, Mexico and Norway) of which additional information had been requested by the Committee at its second session, Denmark and Egypt had not yet replied.

23. Of all the additional reports or information which the Committee had asked for at its third and fourth sessions, the additional report of Cameroon requested by 30 June 1990 and that of Senegal requested as soon as possible had still not been submitted.

24. The CHAIRMAN said that, as in the past, reminders would be sent at regular intervals to States parties failing to submit reports or documentation requested of them by the established deadlines.

The meeting rose at 11.25 a.m.

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15 November 1990

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COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 59th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 November 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention

Initial report of Spain

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.59/Add.1.

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-13736/8382A

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

Initial report of Spain (CAT/C/5/Add.21)

1. At the invitation of the Chairman, Mr. Borrego Borrego and Mr. Los Arcos Galbete (Spain) took seats at the Committee table.

2. Mr. BORREGO BORRFGO (Spain) said that his country had submitted its initial report in the same spirit as it had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1987 - one of the fullest possible co-operation. He hoped that the initial report would be improved upon in subsequent periodic reports and looked forward to hearing members' comments.

3. Mr. GIL LAVEDRA, (Country Rapporteur) thanked the Spanish delegation for its report. Nevertheless, he had a few doubts concerning it and apologized in advance if some of his questions contained misunderstandings due to his incomplete knowledge of the Spanish legal system.

4. According to article 17, paragraph 2, of the Constitution, pre-trial detention could not exceed 72 hours, after which the detainee must be released or placed at the disposal of the judicial authorities. It was not clear to him who had the power to make an arrest. According to articles 9 and 11 of Organization Act No. 2/86 on the Security Forces, the National Police and the Civil Guard were responsible for preventing crime. However, the same Act stipulated that the judicial police, whose functions were described in article 29 of the Act, was responsible for carrying out the tasks described in paragraph 126 of the Constitution, namely, the discovery and arrest of criminals. He would therefore like to know whether only the judicial police could make arrests or whether the National Police and the Civil Guard could also do so and which authorities held the detainee in custody for the maximum period of 72 hours. Moreover, according to the Code of Criminal Procedure, notice of an arrest had to be given to the judicial authority or public prosecutor within 24 hours. He wondered whether the detainee was placed at the disposal of the judicial authorities when that period had expired.

5. The Constitution also restricted the period of pre-trial detention to the period strictly necessary for the investigation. It would thus be necessary to have an idea of how the system of criminal procedure worked in Spanish law. For example, was the questioning of detainees part of the investigation and, if so, was a statement made by the detainee to police officers during that period legally valid? Was the system the same for all offences, including acts of terrorism?

6. It would also be useful to know how incommunication was regulated in Spanish law. For example, could a person being held incòmmunicado appoint a defence lawyer of his choosing? Paragraph 19 of the report indicated that a detainee had the right to inform a relative or person of his choosing that he had been detained. Was that right restricted if the detainee was being held incommunicado?

7. Article 55, paragraph 2, of the Constitution authorized the suspension of article 17, paragraph 2, of the Constitution in the case of offences committed by armed terrorist bands. In paragraph 17 of the report, it was stated that, under Organization Act No. 3/1988, the provisions governing the period of detention for armed terrorist groups were now the same as for any type of offence. Nevertheless, it was his understanding that it was possible, in the case of terrorists, to extend the period of pre-trial detention beyond 72 hours. A clarification of that point would be appreciated; in particular, it would be interesting to know how the Constitutional Court had interpreted the possibility of extending the period beyond the 72 hours provided for in article 17, paragraph 2, of the Constitution. Moreover, did the right to be assisted by a lawyer, affirmed in article 17, paragraph 3, of the Constitution, also operate in the case of terrorism?

8. He would also like to know whether, in Spanish law, habeas corpus could be invoked in the case of a detention ordered by a judge.

9. Article 96, paragraph 1, of the Constitution provided for the incorporation of international treaties into internal law. That was a very important point, raising the question of which provisions of the Convention could be automatically applied by the courts and which could not be so applied because they amounted only to an obligation assumed by the State. Further information on that matter would be appreciated.

10. Paragraph 31 of the report dealt with the universal application of criminal law. Paragraph 35 relating to extradition stated that article 8 of the Convention was directly applicable by the Spanish courts with no need for any transposition. Nevertheless, there appeared to be exceptions. Paragraph 44 of the report indicated that, although Spanish legislation did not contain any specific provisions with regard to article 15 of the Convention, the gap had been filled by court decisions. However, if the Convention was applied directly in Spanish law, why was that necessary? Was not article 15 of the Convention sufficient?

11. He would like to have some further information on the Parliamentary Commissioner mentioned in paragraph 13 of the report. For example, how did he perform his duty to monitor Government activity and could he represent a victim of torture before the courts?

12. Paragraph 14 of the report stated that an appeal against the decision of the judge who had initially heard a case involving torture might be lodged with the Provincial Court and that it might eventually come before the Supreme Court. However, according to article 8 of Organization Act No. 2/86 on the Security Forces, the competent court to try offences committed by policemen was the Provincial Court itself, not a court of first instance. What appeal procedure existed in such cases?

13. With regard to paragraph 15 of the report, he asked what effects a judgement by the Constitutional Court had in a case involving torture.

14. The right of every detainee to be examined by a forensic surgeon or his deputy, mentioned in paragraph 20 of the report, was all to the good, but what measures were taken to ensure that the detainee really was able to avail himself of that right, bearing in mind that he had to submit his application through the same persons as were holding him in custody? In other

legislations, provision was made for the compulsory medical examination of all detainees. In that connection, it would be interesting to know the contents of the order concerning medical assistance for detainees issued by the Ministry of the Interior on 11 June 1981.

15. With reference to paragraphs 28 to 30 of the report, it seemed clear that article 23, paragraphs 1, 2 and 3, of the Judicial Organization Act took account of the principles of territoriality and "active nationality" ("nacionalidad activa") embodied in article 5, paragraph 1, of the Convention. However, that was not apparently the case with the principle of "passive nationality" ("nacionalidad pasiva"), when the victim was of Spanish nationality, which was also embodied in article 5, paragraph 1, of the Convention. Was it possible for the rule contained in the Convention to be applied in Spain?

16. He wondered whether the provisions for promoting human rights and prohibiting torture contained in training programmes for officials, referred to in paragraphs 37 and 38 of the report, also applied to medical personnel, as required by article 10 of the Convention.

17. In paragraph 43 of the report, it was indicated that article 22 of the Penal Code extended subsidiary responsibility to the State for acts committed by its officials. Had there been any court decisions interpreting that article? Also, were there any rehabilitation programmes for victims of torture?

18. Lastly, he expressed his appreciation of the Spanish Government's co-operation with regard to all the human rights instruments it had ratified, especially its acceptance of articles 21 and 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

19. Ms. CHANET (Alternate Country Rapporteur) said that she found the report of Spain somewhat succinct. Although it contained some information on the legal system itself, there was little reference to the way the system functioned or to any problems which might - as she believed they indeed did - arise in connection with the implementation of the Convention.

20. She would appreciate further information concerning the appointment, role, mandate and functions of the Parliamentary Commissioner referred to in paragraph 13 of the report. In his most recent reports, the Commissioner had stated explicitly that torture and ill-treatment in places of detention, and more particularly while in the custody of certain police units, was a serious problem and that many cases of complaints of torture while in custody had not been solved. The Commissioner had put forward a number of suggestions in that regard and it would be interesting to know how the Government had reacted to them.

21. Referring to article 1 of the Convention, she inquired whether the term "torture" was defined under Spanish law; from paragraphs 16 and 25 of the report, it appeared that, for the purposes of criminal proceedings and possible penalties, acts of torture were usually regarded as offences of assault and homicide. If that was indeed the case, acts of torture which were not so characterized, especially those which left no trace of injury, might not be covered by law. The same basic question might be asked with regard to other cruel, inhuman or degrading treatment.

22. With reference to paragraph 19 of the report, she asked whether persons held under anti-terrorist laws or because of alleged membership of armed groups enjoyed the same right as other detainees to inform their families of their detention.

23. In relation to paragraph 20, she shared Mr. Gil Lavedra's concern about how the right to medical examination was actually exercised. She also asked whether the duration of interrogations was limited, whether records were kept and whether periods of respite from interrogation, or meal-breaks, were guaranteed by law.

24. Paragraph 24 was somewhat laconic and, in her view, constituted an inadequate reply as far as the implementation of article 3 of the Convention was concerned. She asked in particular whether the provisions of that article concerning the refusal of expulsion or return ("refoulement") were reflected in Spanish law.

25. In paragraph 31 of the report, it was stated that, in view of the "self-executing" nature of international instruments to which Spain was a party and the principle of community of interests, it might be "inferred" that Spanish courts were automatically competent to apply the provisions of the Convention. But did not inference imply a possible element of doubt? Could it be categorically stated that the jurisdiction of Spanish courts, by virtue of the self-executing nature of the Convention, was automatic? Referring to the French legal system, which was similar in that regard to the Spanish system, she said that, notwithstanding the principle of universal jurisdiction embodied in many conventions, such as the international instruments against the hijacking of aircraft or the European Convention on the Suppression of Terrorism, to which Spain was a party, some types of jurisdiction, such as territorial jurisdiction, which determined the place of prosecution, had to be established by internal law. She would therefore appreciate it if the Spanish delegation could explain the claim that jurisdiction concerning offences under the Convention against Torture was automatic.

26. Paragraph 37 of the report relating to articles 10 and 11 of the Convention merely referred to training programmes for officials who dealt with persons subjected to detention or imprisonment. She would like to have detailed information concerning the organization and content of those programmes. Was such training provided for the medical staff of psychiatric and other hospitals?

27. With regard to article 13 of the Convention and paragraphs 40 to 42 of the report, she noted that the Parliamentary Commissioner in Spain had commented on the discrepancy between the number of complaints filed and the number of cases actually solved. In a recent case, for example, the members of an alleged commando had appeared in court bearing obvious signs of physical assault and a number of complaints had been filed as a result. She asked what the results of the investigation into the matter had been and requested general figures or statistics on proceedings instituted, the findings of investigations and penalties imposed.

28. Concerning paragraph 43, which dealt with the right to redress and compensation covered by article 14 of the Convention, she asked for specific details on the implementation of the relevant provisions of the Spanish Penal Code, the procedures followed, the chances of success of claims, the types of

redress and compensation granted, the number of persons receiving compensation and the amounts involved. Lastly, did Spain have any programmes of physical or mental rehabilitation for victims of torture?

29. Mr. SORENSON, referring to paragraph 20 of the report, asked whether the forensic surgeon and his deputy were independent, whether they were answerable to prison governors or to the Ministries of Justice or Health and by whom they were appointed. He also asked whether detainees were able to obtain a second opinion from their own doctor. The provisions of the Penal Code on redress and compensation described in paragraph 43 were extremely important and he looked forward to the answer to Ms. Chanet's request for details on those provisions.

30. He asked whether an amnesty law had been adopted following the transition from dictatorship to democracy in 1975 and drew attention to the recent statement made in Madrid by the Standing Committee of Doctors of the EEC, which provided guidance for doctors attending patients on hunger strike.

31. Mr. KHITRIN said that that he had inferred from paragraph 38 of the report that the General Prisons Act made provision for solitary confinement, which was, in his view, a form of moral torture. He asked in what circumstances it was applied, what the maximum period of detention was, under what conditions persons were held in solitary confinement and whether such conditions were different from general conditions of detention. He also requested figures indicating the number of persons in solitary confinement and details of how their status might complicate proceedings, as well as an indication of how many criminal proceedings for torture had been instituted by the Department of Public Prosecutions in the last five years and what the results of such proceedings had been.

32. With regard to article 14, he asked in how many cases compensation had been awarded for injury inflicted by officials and what amounts of compensation had been granted. Lastly, he noted that, because the report was so short, it contained no details of conditions in places of detention and he requested further information on such conditions, together with details of the legal guarantees enjoyed by detainees.

33. Mr. BURNS said that his questions would relate more to matters of interpretation than to matters of substance, since it was widely recognized that, after the changeover to democracy, basic human rights standards had been incorporated in the Spanish Constitution. He nevertheless regretted that the report was not more detailed. He would thus like to know whether the Criminal Code contained a specific definition of torture, whether there had been any prosecutions for torture and, if so, how many and with which results. Paragraph 6 of the report referred to the constitutional mandate to give effect to the fundamental rights of Spaniards. However, it was not clear whether that obligation also applied to foreigners. Paragraph 11 stated that, since the official publication of the Convention in the Boletín Oficial del Estado on 9 November 1987, its provisions could be invoked before the courts, "which may apply them directly". The term "may" was confusing and he asked whether the provisions of the Convention did not apply automatically. He also requested further details concerning the functions of the Parliamentary Commissioner and, in particular, how he was appointed and what his terms of reference were. Had there been any cases where the Government had acted on the Commissioner's recommendations?

34. It was unclear from paragraph 17 of the report whether the term detention also covered holding a person incommunicado. He had received information to indicate that it did and would like to know whether that was actually the case. Like Mr. Gil Lavedra, he also wished to know whether pre-trial detention could be extended to from three to five days in certain circumstances.

35. Paragraph 40 of the report stated that all Spanish citizens could institute criminal proceedings under the Criminal Prosecution Act, although it was not clear from paragraphs 40 and 41 whether private individuals could institute such proceedings as complainants or as private prosecutors. He would like some clarification of that point.

36. Mr. MIKHAILOV welcomed the very precise and interesting report submitted by Spain and said that it was of particular interest to his own country in view of Spain's experience of the changeover from a totalitarian to a democratic system.

37. Paragraph 11 of the report stated that, under article 96, paragraph 1, of the Constitution, international treaties which had been officially published in Spain automatically applied and could be repealed, amended or suspended only in the manner provided for in the treaties. However, paragraph 22 stated that, where exceptional circumstances threatened Spain's constitutional order, certain constitutional guarantees could be temporarily suspended. He was not sure that those two provisions were compatible.

38. He would appreciate further information on the legal status of the Parliamentary Commissioner referred to in paragraph 13 of the report. He also asked how appeals for amparo to the Constitutional Court, as referred to in paragraph 15, applied in practice.

39. Although the anti-terrorist legislation introduced by Organization Act No. 9/1981 of 26 December 1981 had since been repealed, he asked how it had been applied, how it had restricted human rights and whether he could have a copy of the translation of the Act into French for consultation.

40. He agreed with Ms. Chanet's question on paragraph 24 concerning the guarantees relating to extradition provided for by Spanish legislation and said that he did not understand exactly which material and procedural guarantees were provided for by Organization Act No. 4/1985 of 21 March 1985.

41. Mr. DIPANDA MOUELLE asked whether, pursuant to article 8, paragraph 2, of the Convention, Spain considered that the Convention was the legal basis for extradition in cases involving States with which it had signed a treaty on extradition. He would also like to have a description of the structure of the Spanish prison system.

42. The CHAIRMAN said that, if the Spanish delegation was unable to reply to all the questions asked during the afternoon meeting, it could send the Committee written replies at a later date.

43. Paragraph 25 of the report seemed to indicate that the Spanish Penal Code contained a rather more restrictive definition of torture than that adopted in the Convention. In particular, the Penal Code apparently required that, in order to be classified as torture, offences had to be committed for the

purpose of obtaining a confession. Under the Convention, acts of torture could also be committed in order to intimidate or punish and he wished to know whether such acts were punished by Spanish criminal law.

44. In connection with paragraph 17 of the report, he had received information, in particular from Amnesty International, indicating that a person in pre-trial detention was unable to choose his own lawyer, that his family was not informed of his detention and that he could consult a lawyer of his choice only at the end of the period of pre-trial detention. He asked whether that information was correct. Like Mr. Gil Lavedra, he wished to have a copy of the order concerning medical assistance for detainees issued by the Ministry of the Interior on 11 June 1981.

45. Paragraph 24 stated that extradition was not granted by Spain if the requesting State did not provide guarantees that the person whose extradition was being requested would not be subjected to punishment that would harm his physical integrity or to inhuman or degrading treatment. He noted that article 3 of the Convention went even further and prohibited extradition to a State where there were substantial grounds for believing that the person extradited would be in danger of being subjected to torture. He was therefore not sure that Organization Act No. 3/1989 was fully in keeping with the provisions of the Convention. Paragraph 25 of the report referred to acts of torture committed in order to obtain confessions. Since the terms of the Convention were considerably broader, he asked whether acts of torture committed for other purposes, for example, to punish or to intimidate, were punished less severely. The reference in the last sentence of paragraph 29 of the report to the jurisdiction of the Spanish courts over offences committed by Spanish public officials residing abroad in the performance of their duties was somewhat confusing and appeared to restrict the provision contained in article 5, paragraph 1 (b), of the Convention. He therefore requested clarification of that point.

46. He asked whether Spain had merely signed the Vienna Convention on Consular Relations, mentioned in paragraph 32 of the report, or whether it had also ratified it.

47. Paragraph 34 of the report indicated that Spain applied restrictions to extradition whose effect was to weaken the scope of article 8, paragraph 1 of the Convention providing that "The offences referred to in article 4 of the Convention shall be deemed to be included as extraditable offences".

48. Several members of the Committee had asked whether human rights issues were taught as part of training programmes for officials. He wished to know whether such training was also given to military personnel and whether the Committee could be provided with copies of any written instructions issued in that regard. Information on cases in which persons had been prosecuted for torture would be extremely useful to the Committee and he would like to have copies of the relevant parts of the report by the Parliamentary Commissioner. For example, 46 allegations of torture had been made in September 1989 and he asked whether those allegations had led to criminal proceedings, if so, how many complaints had been filed and what sentences had been handed down.

The public meeting rose at 11.15 a.m.

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COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 60th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 November 1990, at 3 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Spain (continued)

Organizational and other matters (continued)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Spain (CAT/C/5/Add.21) (continued)

1. At the invitation of the Chairman, Mr. Borrego Borrego (Spain) took a place at the Committee table.

2. Mr. BORREGO BORREGO (Spain), replying to the questions put by members of the Committee, said first of all that in Spain the functions of the judicial police were performed by the State Security Forces, comprising both the National Police, which was a civilian institution, and the Civil Guard, which was a military one. Those forces carried out arrests, pursuant to article 90 of Organization Act No. 2/1986 on the State Security Forces. Pursuant to article 11 (g) of the Act, they were also responsible for protecting the free exercise of fundamental rights and freedoms, for ensuring the security of citizens and for carrying out investigations into offences committed, in order to find and arrest suspects.

3. Moreover, in Spain a distinction was made between detainees depending on whether they were ordinary offenders or members of terrorist groups, armed gangs or organized groups such as drug traffickers. Where ordinary offenders were concerned, custody could not exceed 72 hours, after which the detainee had to be released or placed at the disposal of the judicial authorities. Within 24 hours of his arrest, the detainee had to be given information or explanations in accordance with his constitutional rights and with the rights recognized by article 520 of the Code of Penal Procedure, in particular the right to be informed of the grounds for his arrest, the right to be assisted by counsel of his choosing, and the right to remain silent and to be examined by a forensic surgeon or his substitute. Foreigners were entitled to contact their country's consulate and to be assisted by an interpreter if they did not understand or speak Spanish.

4. Terrorists and drug traffickers had exactly the same rights as other detainees. However, they were in general held incommunicado and were not allowed to choose their counsel; accordingly, they were assisted by an assigned counsel. Moreover, in such cases the period of custody was rather longer, but it could not exceed five days since the repeal of Organization Act No. 9/1984, which had authorized the extension of custody to 10 days, and which the Constitutional Court had declared unconstitutional on the grounds of the current relevant international standards, and in particular of the International Covenant on Civil and Political Rights.

5. While they were in custody, detainees could be interrogated, although the interrogation should always be carried out in the presence, and with the assistance, of the counsel of their choosing or the assigned counsel, as appropriate. Statements made during questioning were only valid before the courts if they were confirmed by the accused himself during the trial. The same was true of statements made by witnesses, who had to repeat their statements before the courts.

6. Incommunication during custody only applied to members of terrorist groups or armed gangs, who were not allowed to communicate with the members of their family for the whole of the period of custody, i.e. a maximum of five days, or to choose their counsel. Occasionally, a judge might however allow them to do so, as in the case of Henri Parot, a French national suspected of being a member of a terrorist group. The judge could also suspend incommunicado detention. The trial procedure itself was the same for all detainees, regardless of the category to which they belonged.

7. As far as the Parliamentary Commissioner was concerned, he emphasized that the Commissioner performed his functions, as specified by Organization Act No. 3/1981, in complete independence. The Parliamentary Commissioner, who was elected by a qualified majority of the Cortes, was empowered to monitor Government activity and drew up an annual report on his extremely varied activities, which was examined by Parliament. In particular, the Commissioner had lodged an appeal on grounds of unconstitutionality against the law on conscientious objection and had on several occasions interceded in connection with the expulsion of foreigners. He was empowered to transmit any complaints of torture to the Government Procurator's Office so that the latter could initiate criminal proceedings if deemed necessary.

8. Regarding the fact that members of the security forces were tried directly by a court of second instance, the Provincial Court, it had to be emphasized that the origins of that somewhat controversial and long-established system lay in the notion that higher-ranking judges were less likely to be influenced or intimidated by members of the police or security forces. The Constitutional Court had considered the matter, although the decision it had adopted did not clearly establish whether that special court was constitutional or not. In his opinion, that court would probably become obsolete, if only on account of the implementation of the principle of equality, set out in article 14 of the Constitution.

9. With regard to remedies, he specified that the remedy of habeas corpus could be invoked and that no one could be unlawfully arrested or detained. Anyone who made an unlawful arrest or detention would be guilty of an offence under article 480 of the Penal Code. There were two systems of constitutional control: an abstract form of control which required no material act, and a specific form of control under which a judge or court that had to apply, in respect of a particular case, a law whose constitutionality was open to doubt, could request the Constitutional Court to consider whether the law was constitutional or not. Lastly, the remedy of amparo, which was governed by the Constitution, could be invoked after all other remedies had been exhausted, by all Spanish citizens and foreigners residing in Spain if any of their constitutionally guaranteed fundamental rights had been breached. However, pursuant to the right to equality, which was a fundamental right, an application for amparo could also be made to the Constitutional Court if rights that were not considered fundamental had been breached. Thus, an application for amparo could be made to the Constitutional Court by any person who considered that he had been the victim of discrimination in tax matters.

10. With regard to the practice of torture in Spain, only one complaint involving Spain had been brought before the European Committee for the Prevention of Torture, and it was currently being examined by the European Commission of Human Rights. The case involved a complaint made by members of

the terrorist group, GRAPO, alleging artificial or forced feeding while they had been on a hunger strike to obtain the right to be held together in the same prison. Some Spanish judges indeed authorized forced feeding of hunger strikers when they had reached a certain degree of unconsciousness.

11. In any event, all prisoners were entitled, as soon as they were arrested, to be examined by a doctor, and the police took care to ensure that its behaviour gave no grounds for accusing it of ill-treatment. All the measures taken within the Spanish legal system to prevent acts of torture were effectively implemented, and the text of the order concerning assistance for detainees issued by the Ministry of the Interior on 11 June 1981 would be transmitted to the members of the Committee as soon as possible.

12. Moreover, the prohibition of torture was incorporated into all the training programmes of officials who dealt with persons subjected to detention or imprisonment, and in particular members of the National Police and the prison administration as well as forensic surgeons and prison doctors. In his annual report, the Parliamentary Commissioner had, moreover, congratulated doctors on their activities on behalf of detainees. A survey of AIDS in Spanish prisons, which had been carried out thanks to co-operation between detainees and doctors, had been presented to participants in the San Francisco Congress on AIDS. It should be emphasized that in Spain it was strictly forbidden for doctors to inform the director of a prison of the identity of detainees with AIDS.

13. With regard to the origin of the subsidiary responsibility of the State for acts committed by its officials, mentioned in paragraph 43 of the report, he stressed that Spain had been a pioneer in that field, as it had set out in an act, as early as 1957, the principle of State responsibility. The principle had subsequently been confirmed by other legislative instruments as well as by articles 9 (3) and 106 (2) of the Constitution.

14. He confirmed that the Convention against Torture could be invoked directly before the Spanish courts by virtue of the fact that it had been incorporated into Spanish internal law, as indicated in the report. Thus, members of the GRAPO terrorist group had been able, within the context of an application for amparo to the Constitutional Court, directly to invoke article 2 (2) of the Convention. As far as the use of statements obtained under torture as evidence was concerned, it was true that Spanish law contained no formal provision in that respect. However, as indicated in paragraph 44 of the report, that shortcoming had been remedied by the Constitutional Court in 1984, despite the fact that the Convention against Torture had not been ratified until 1987 and had consequently only been in force in Spain since that date. Pursuant to the decisions of the Constitutional Court, any evidence obtained by unlawful means, i.e. means incompatible with the rights guaranteed by the Constitution, was inadmissible.

15. In respect of the more detailed information that several members would have liked to find in the report, he said that Spain would provide details in its subsequent report. Regarding, in particular, the functions of the Parliamentary Commissioner, he said that the Commissioner had to obtain three fifths of the votes of the members of the Cortes, who always chose a reputable independent candidate of recognized integrity. However, in Spain the Parliamentary Commissioner mainly received complaints concerning social security benefits.

16. As far as the penalties to which an official who carried out acts of torture that left no traces would be liable, he stressed that while certain forms of violence left no trace, they nevertheless affected the physical or mental health of the victim. Article 204 bis of the Penal Code had been amended, at the request of the Parliamentary Commissioner, by Organization Act No. 3/1989 of 21 June 1989, which defined the relevant offences and penalties, while article 420 bis of the same Code covered internal or external injuries caused by ill-treatment.

17. The functions of the forensic surgeon were defined by the Courts Organization Act and his diagnosis was never questioned. He (Mr. Borrego Borrego) had himself had a discussion with the Madrid procurator, who had confirmed that the prestige and trust enjoyed by forensic surgeons were such that there had so far been no need to request second opinions.

18. As far as interrogation was concerned, he pointed out that the representative of the prosecutor's office informed detainees of their rights and that the counsel who was present could request that the interrogation should be suspended if he felt that his client was tired. A statement made by a detainee was invalid if he appeared to have been ill-treated or brutalized. Moreover, the interrogation was monitored by the judicial authority, which ensured that it was carried out properly.

19. With regard to the guarantees afforded to a person concerned by an application for extradition, he said that in Spain the Council of Ministers was responsible for considering applications for extradition and for deciding whether to transmit them to the National High Court in Madrid. Depending on whether that body approved or rejected the application, extradition was granted or refused by the political authorities. The Spanish Government was kept informed through the diplomatic channel of the situation in the country requesting the extradition.

20. With regard to the training provided to officials to prevent torture, he said that members of the National Police, the Civil Guard, prison administration officials and students at the Judiciary Academy were given specialized instruction on human rights as part of their studies. Retraining programmes were also organized in Spain or abroad. Thus, on 26 November 1990, prison directors together with police and Civil Guard officials were to take part in a training programme specially organized for them in Strasbourg. Doctors who wished to take part could also do so.

21. Terrorist movements were a subject of considerable concern in Spain; police officers and judicial authorities were careful to avoid any act that might be held against them, since such groups seized on any pretext to claim that they had been subjected to torture. No abuse of authority had been notified when the "Araba" commando had been taken into custody on 19 September 1989 in the frontier town of Irún, or during the interrogation of Henri Parot, although the latter would appear to have complained to the lawyer retained by his family that his life had been threatened and that he had been ill-treated.

22. As for redress in the case of damage involving the responsibility of the State, he said that the actual amount was determined by the judicial authority on a case-by-case basis. For example, a number of young recruits who had been ill-treated in the course of their military service had been awarded substantial compensation.

23. He further stated that the law of amnesty in Spain did not apply to offences committed under the Franco régime but only to offences by groups opposed to the present régime.

24. Concerning incommunication, he stated that, when members of organized groups - usually drug-traffickers - were held incommunicado, judges could, if they so desired, visit Civil Guard premises or police stations to verify the treatment of the suspects. The authorities were strongly committed to respect for democratic rights and repressed all practices reminiscent of a bygone period.

25. As to the definition of acts of torture under Spanish law, he stated that the definition given in article 1 of the Convention was directly applicable in Spain; any official found guilty of such acts was liable to the penalties set out in article 204 bis of the Penal Code. The Association for Human Rights and the Parliamentary Commissioner had included in their reports the judgements handed down in the two cases of torture which had come before the courts in 1989.

26. As indicated in paragraph 17 of the report, the anti-terrorist legislation introduced by Organization Act No. 9/1984 of 26 December 1984 had been abolished. Full details of the Spanish penitentiary system would be found in the Parliamentary Commissioner's report. He added that provision was made under the General Prisons Act (Ley General Penitenciaria) for parks, gardens and sports fields in the vicinity of penitentiary establishments.

27. Whether as punishment, or as a means of obtaining a confession, recourse to torture was formally prohibited in Spain. The Parliamentary Commissioner's report mentioned a number of complaints recently lodged against certain officials, adding that they were isolated and quite exceptional occurrences, unlikely to be repeated.

28. Mr. DIPANDA MOUELLE asked whether the special procedure whereby members of the security forces could only be tried by a higher court also applied to members of the Gendarmerie, the National Police, the Civil Guards and the armed forces. Did that procedure correspond to the privilages enjoyed by the magistrature in certain other countries?

29. Mr. BORREGO BORREGO (Spain) explained that that procedure applied only to members of the National Police and the Civil Guard.

30. Moreover, magistrates enjoyed no privileges whatsoever, and were subject to the same rules of trial as all other Spanish nationals. A certain number had, in fact, been convicted for various offences.

31. Mr. GIL LAVEDRA (Country Rapporteur) thanked Mr. Borrego Borrego for his very detailed replies, which had clarified certain obscurities in the report.

32. He nevertheless remained concerned about the arbitrary designation of defence lawyers for persons suspected of belonging to terrorist groups. He recalled that the right to be defended by a lawyer of one's choosing constituted a fundamental element of the right to a fair trial. In his opinion, the provisions of the Constitution which related to the designation of an attorney should be interpreted in the light of article 10 of the same instrument together with the relevant provisions of the Universal Declaration of Human Rights and other applicable international instruments.

33. Although some of the articles of the Penal Code might to a large extent cover what was defined as torture in article 1 of the Convention, he found it difficult to understand how the provisions of the latter article could be directly applied without having first been incorporated into internal law.

34. He wondered, furthermore, whether it might not be wiser to provide for systematic medical examinations for prisoners, rather than leaving it to detainees to ask for such an examination. Systematic medical inspection would make the efforts to eliminate torture more effective.

34 bis. Ms. CHANET fully endorsed Mr. Gil Lavedra's remarks and said she had one or two additional observations to make.

35. In the first place, although the institution was a most interesting one, she wondered what was the real impact of the findings arrived at by the Parliamentary Commissioner and to what extent the Government was obliged to abide by them, in particular when they involved a call for urgent inquiries.

36. Secondly, she remained doubtful concerning the direct application of the Convention in Spanish internal law. Criminal law was subject to strict interpretation; and the text of a convention, no matter how precise, could not replace an internal law. It might be helpful, as a means of suppressing torture as described in the Convention, for Spain to enact an internal law defining torture; what the report suggested to be a certain ambiguity in respect of acts committed for the purpose of obtaining a confession might thereby be eliminated.

37. Her third concern was with the rules of jurisdiction. In the absence of any other principle of jurisdiction based on the nationality of the author or the victim, the jurisdiction ratione loci in criminal affairs of the State in which the arrest took place should be explicitly written into the domestic legislation of any country possessing such a body of statutory law.

38. Fourthly, she agreed that forensic surgeons would be reliable persons, but wondered how detainees could have access to them. Indeed, access to doctors, the supervision of interrogations and the respite accorded during periods of interrogation were all matters which should, in her opinion, be the subject of regulations.

39. Lastly, with regard to the alleged ill-treatment of members of the "Araba" commando, Mr. Borrego Borrego's replies did not match the information provided by Amnesty International, according to which those concerned had appeared in court bearing signs of physcial assault and had complained openly of ill-treatment. She would have appreciated information concerning follow-up of those complaints.

40. The CHAIRMAN, referring to the distinction made in Spanish law between ordinary prisoners and those suspected of terrorism, noted that the rules applicable to the latter were far more severe, and expressed the view that the Spanish authorities might consider revising them.

41. He shared the views expressed by Mr. Gil Lavedra and Ms. Chanet with regard to the direct application under domestic law in Spain of article 1 of the Convention, which provided a definition of torture.

42. Mr. GIL LAVEDRA (Country Rapporteur) observed that reports such as that of Spain should permit assessment of the extent to which States were fulfilling their obligations under the Convention. In the present instance, the results of the examination were very favourable. By acceding as it had done to all the human rights instruments, at both the international and regional levels, the Spanish Government had demonstrated its firm determination to respect human freedom and dignity. Furthermore, Spanish law embodied a number of impressively relevant standards. Thus, according to the Constitution, all universal rights were to be interpreted in conformity with the Universal Declaration of Human Rights and other applicable international instruments.

43. The manner in which certain controversial issues, such as respect for the right to life, the legal control of the security forces and the regulation of their activities, were resolved under Spanish law appeared to him to be irreproachable. In sum, he believed that he was speaking on behalf of all the members of the Committee in expressing the opinion that Spain respected or was endeavouring to respect its obligations under the Convention against Torture.

44. Members of the Committee were understandably concerned about the regulations with regard to acts of terrorism, since it was in that highly sensitive area that the risks of abuses and of torture were the greatest. Furthermore, several members had expressed the view that Spanish domestic law should provide a definition of torture that matched the terms of the Convention, and that universal jurisdiction where the application of criminal law was concerned should be clearly established in doemstic legislation. In addition, in order to combat torture more effectively, and as Ms. Chanet had pointed out, there should be explicit and systematic provision for medical examinations and attendance by forensic surgeons.

45. Lastly, to complement the report of Spain, it would be very useful for members of the Committee to have at their disposal the texts of all the laws and regulations which had been mentioned.

46. He thanked Mr. Borrego Borrego for his co-operation and for his excellent oral introduction of the country report.

47. The CHAIRMAN said that, if there were no objections, he would take it that Mr. Gil Lavedra's statement constituted the Committee's conclusions.

48. It was so decided.

49. The CHAIRMAN announced that the Committee had thus completed its consideration of the initial report of Spain.

50. The delegation of Spain withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

51. The CHAIRMAN consulted members concerning a suggestion made to him that the Committee should hold a press conference. He was personally quite favourable to that idea.

52. Mr. SORENSEN endorsed the suggestion; in his opinion, the sole means of winning the battle against torture lay in alerting public opinion world-wide to the problem.

53. The CHAIRMAN said that, if there were no objections, he would take it that the Committee wished to hold a press conference at 11 a.m. on Thursday, 22 November 1990.

54. It was so decided.

The public meeting rose at 4.50 p.m.

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COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 61st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 November 1990, at 10 a.m.

Chairman: Mr. VOYAME

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Initial report of Ecuador

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Turkey (CAT/C/7/Add.6)

1. At the invitation of the Chairman, Mr. Duna, Mr. Hazar, Mr. Korkutan, Mr. Capkin, Mr. Gültekin, Mr. Gürsu, Mr. Ozmen and Mr. Demiralp (Turkey) took seats at the Committee table.

2. Mr. DUNA said that his country's initial report (CAT/C/7/Add.6) had been prepared in accordance with the Committee's general guidelines (CAT/C/4/Rev.1). It contained information on the measures taken by Turkey to give effect to its undertakings under the Convention.

3. As clearly stated in article 2 of the Constitution, respect for human rights was one of the main tenets of the Republic of Turkey. The protection of the physical and mental integrity of the individual was recognized as a basic human right. Article 17/3 of the Constitution thus stipulated that "No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalty or treatment incompatible with human dignity". That provision was fully in keeping with article 5 of the Universal Declaration of Human Rights.

4. Action by Turkey to combat torture was organized at the national and international levels. International agreements and conventions that had duly entered into force became part of national legislation and could be applied directly by the courts and other authorities in accordance with a long-standing legal principle that had been incorporated into the 1982 Constitution. No appeal could be made to the Constitutional Court with regard to international agreements on the ground that they were unconstitutional.

5. Turkey had a been a party to the European Convention on Human Rights since 10 March 1954 and, since 28 January 1987, had recognized the competence of the European Commission of Human Rights to receive petitions from any person, non-governmental organization or group of individuals. The Turkish Constitutional Court had confirmed that it was impossible to enact any law incompatible with the European Convention, thus reaffirming Turkey's commitment to its international obligations. Turkey had also recognized the compulsory jurisdiction of the European Court of Human Rights on 25 September 1989 and had recently signed Protocol No. 9 to the European Convention on Human rights, which recognized the right of individuals and non-governmental organizations to apply to the European Court of Human Rights. It had ratified both the European Convention and the United Nations Convention against Torture and had accepted the competence of all monitoring mechanisms established under those Conventions.

6. The Government of Turkey believed that preventive measures were of primary importance in combating torture and it was therefore placing increasing emphasis on the teaching of human rights in police schools and organizing courses and seminars for security and other public officials. Current Turkish legislation contained several provisions to prevent torture and ill-treatment. It embodied the principles of the presumption of

innocence, the right to legal counsel at every stage of the legal proceedings, the rule of prompt notification of a person's detention to his or her relatives and the right not to answer questions. "Testimony on free will" was another general principle of the Turkish legal system. It other words, testimony must be free from any kind of pressure. In that connection, he stressed that article 15 of the Convention was fully and directly applicable in Turkey.

7. Another important preventive measure was that all detainess must be subjected to medical examination before and after detention and interrogation. Forensic doctors were fully independent in the exercise of their functions. At the request of a detainee or the Public Prosecutor, moreover, any other doctor could be chosen to perform an examination.

8. A description of the most recent improvements to Turkey's legislation concerning conditions of imprisonment and detention was to be found in the report of the Secretary-General on the administration of justice and the human rights of detainees (E/CN.4/Sub.2/1990/20).

9. When the crime of torture or ill-treatment was committed, the perpetrator would be punished under the relevant provisions of the Penal Code and Public Prosecutors were required ex officio to investigate any allegations or reports of torture. All Turkish citizens were entitled to submit petitions to the competent authorities and to Parliament and could appeal to the European Commission or Court or to the Committee against Torture if they failed to obtain satisfaction at the national level. The Turkish State was directly responsible for any abuses committed by public officials and articles 40 and 41 of the Constitution embodied the principle of compensation for any damage caused by an abuse of State power. There were also a number of legal provisions to compensate persons who had been unlawfully arrested, detained or subjected to torture and Turkey had signed the European Convention on the Compensation of Victims of Violent Crimes.

10. As was appropriate in a pluralistic democracy, legislation in Turkey was under constant public and parliamentary scrutiny. The public debate on the issue of human rights had led to proposals for important amendments to current legislation. The Penal Code was under review and, according to the first set of draft amendments, sentences for torture were to be doubled, the period of pre-trial detention considerably reduced and provision made for compulsory legal counsel, if necessary, at State expense. A joint proposal had also been submitted by three major political parties concerning the establishment of a parliamentary commission on human rights which would have broad powers.

11. The Government of Turkey was committed to the eradication of torture and ill-treatment and his delegation, whose high level was a clear indication of the importance Turkey attached to the Committee's work, looked forward to a frank and sincere dialogue.

12. Mr. BURNS (Country Rapporteur) welcomed the comprehensive report submitted by Turkey and said that it would considerably facilitate the Committee's work. All members of the Committee were aware of the criticism recently levelled at Turkey, particularly by non-governmental organizations such as Amnesty International, which had estimated that there was a total of about 5,000 political activists, prisoners of conscience and journalists in

detention in Turkey. It was also necessary to bear in mind the existence of the State Security Courts, which had replaced the earlier military tribunals, alongside the ordinary courts.

13. The report gave a comprehensive review of the formal safeguards against torture in Turkey, although substantive issues were dealt with rather briefly. He asked whether there was any specific definition of torture under Turkish law and, if not, whether the definition contained in in the Convention had been incorporated directly into internal law and what punishment was provided for torture. He would like to know the number of political prisoners and prisoners of conscience in Turkey, how many persons were currently facing the death penalty, whether convicted prisoners, as distinct from persons in pre-trial detention, were subjected to solitary confinement and, if so, how long it could last and what authority was responsible for ordering it. He would also like further information on the circumstances in which persons could be held incommunicado.

14. He asked what guarantees ensured the independence of the judiciary, as referred to in paragraph 10 of the report, and what functions were performed by the State Security Courts. He also noted that the Public Prosecutor of the State Security Courts could hold persons in pre-trial detention for 15 days. Was such detention subject to review and, if so, by whom?

15. Although the Turkish Penal Code banned ill-treatment of prisoners, it was necessary to define what the concept of ill-treatment actually covered and to clarify how conditions in prisons were reviewed.

16. The report seemed to indicate a contradiction between the ruling by the Supreme Court concerning the admissibility of evidence obtained by coercion and the practice adopted by the military courts and he asked whether that apparent contradiction had been resolved and, if so, how Turkey ensured that confessions obtained by coercion were not accepted by the State Security Courts. Although the report stated that persons in pre-trial detention were normally no longer held incommunicado, it would be interesting to know how that provision was enforced in remote regions and how access to counsel was guaranteed.

17. The move to establish a parliamentary commission was a welcome one, although it was necessary to specify what its actual legislative and executive powers would be and, in particular, whether it would have the power to investigate.

18. He drew attention to the discrepancy in paragraph 76 of the report between the number of cases of torture brought before the courts and the number of policemen sent to prison and asked whether it was attributable to the fact that a large number of policemen had received other sentences or to deficiencies in the judicial system. The reference in paragraph 6 of the report to compensation was somewhat confusing and it should be indicated how victims could obtain compensation, what procedure they had to follow and whether Turkey had made any provisions comparable to those of the criminal injury compensation schemes adopted by other States.

19. Mr. GIL LAVEDRA (Alternate Country Rapporteur) said that he too had been struck by the discrepancy between the number of cases of torture brought before the courts and the number of policemen who had received prison sentences. He was also concerned by the fact that the period of pre-trial detention could be extended to 15 days in the case of collective crimes and asked whether the involvement of more than three persons in a crime was sufficient justification for such an extension of pre-trial detention.

20. Paragraph 5 (c) of the report referred to a restriction on the notification of a detainee's next of kin. He asked what the exact scope of the restriction was and which authority determined whether it was applicable. He noted from paragraph 11 (c) of the report that the jurisdiction of military courts extended to civilians in certain circumstances and he asked how that applied in practice. He also requested further information on the functioning, composition and jurisdiction of the State Security Courts and on whether they were subject to the same procedural rules as civil courts. He welcomed the provisions Turkey had adopted with regard to medical examinations of detainees, although he noted that there was a discrepancy between the comprehensive nature of those provisions and the considerable number of complaints filed. He asked whether the decision to extend the period of pre-trial detention required approval of the courts or whether it could be taken by the Public Prosecutor himself and whether the time-limits referred to in the report also applied under emergency legislation. He also wished to know how often and where emergency legislation had been in force in the last two years.

21. Lastly, he asked whether the concept of State responsibility applied in Turkey in cases where it was impossible to identify the persons responsible for acts of torture and whether the authorities could be held responsible on the grounds of omission. That safeguard was extremely important in ensuring that no acts of torture took place and in encouraging the zealous application of constitutional safeguards by the authorities.

22. Ms. CHANET said that she was impressed with the quality of Turkey's report, particularly the wealth of legal information it contained, and with the fact that Turkey had acceded to virtually all the international instruments on human rights, including those concerned with torture. It was all the more surprising that such a large number of allegations of torture in connection with Turkey had been received by various international bodies. The Turkish Government itself had acknowledged that torture had not yet been eradicated in its country. It was therefore regrettable that the report, which was thorough in many respects, did not clearly explain that situation. It could nevertheless be inferred from the information provided that the Turkish legal system had various shortcomings that accounted for the practice of torture.

23. With regard to paragraph 11 (a) of the report, she requested further information on the separate organization of the ordinary courts. She was disturbed to learn that military courts had jurisdiction to try non-military persons, as stated in paragraph 11 (c), and would welcome more details on the special law mentioned in that connection and on the offences covered by it and the procedure and guarantees that applied in such cases.

24. As the report did not refer to the examination of allegations of torture by an independent authority, it could be assumed that those allegations were submitted only to the ordinary courts. She inquired whether the Turkish Government planned to establish such an independent authority.

25. Turkish law did not appear to contain a clear definition of what constituted an act of torture. As a result, those acts had to fall within a specific category of acts of violence defined by the law in order to be punishable. The sentences applicable, namely, three months to one year or three months to three years, were not severe enough to serve as a deterrent. They were also out of proportion with the Turkish Penal Code, which was one of the harshest of any European country, and incompatible with article 4, paragraph 2, of the Convention, which required States Parties to impose penalties commensurate with the offences committed.

26. In connection with the issue of universal jurisdiction, she asked whether the legislation referred to in paragraph 39 of the report would be brought into line with articles 5 and 7 of the Convention.

27. With regard to paragraph 5 (b) of the report, she inquired whether, during the prescribed period of custody, the detainee was held incommunicado and denied access to counsel or family members and at what moment those restrictions were lifted. The 15-day period of custody for offences committed collectively was unusually long.

28. She associated herself with the questions asked by Mr. Burns in connection with article 15 and, pointing out that in Turkey the exclusion of evidence obtained through torture was based only on case law, asked whether there was any plan to enact legislation to that effect. She asked for how long a person could be kept in detention while the circumstances in which his confession had been obtained were being determined and whether there was any remedy in that regard. Lastly, she wished to know how many persons sentenced to death were awaiting execution in Turkey.

29. Mr. KHITRIN commended the Turkish Government on its comprehensive and partly self-critical report and welcomed its determination to eradicate torture in its country. It was regrettable, however, that the provisions of the Convention had not yet been fully incorporated into domestic legislation.

30. He would welcome additional information concerning the law enforcement system in Turkey, particularly the role of the Prosecutor's Off[illegible] and the State Council in protecting citizens against torture.

31. Concerning the reference in paragraph 18 to "persons authorized to use force", he asked who those persons were and under what circumstances they were allowed to use force. He also wished to know what was meant in paragraph 21 by the term "related felonies".

32. In connection with paragraph 50, he inquired what was meant by the provisional five-year application period envisaged for crimes which fell within the jurisidiction of the State Security Courts.

33. He would welcome additional information on the number of complaints received about unlawful action by officials and asked whether the Standard Minimum Rules for the Treatment of Prisoners were being applied, particularly with regard to the space allotted to detainees and the legal guarantees which they enjoyed. How many persons had died in detention and were the circumstances of their deaths being investigated? Had any officials been found responsible and had they been punished?

34. Mr. DIPANDA MOUELLE, associating himself with the questions asked by the previous speakers, particularly Ms. Chanet, asked for further clarification concerning the inaugural oath mentioned in paragraph 4: what was its content, before what body was it sworn and what penalties arose from its violation?

35. Referring to the independence of the courts, he asked whether the judges in the Prosecutor's Office were irremovable and whether irremovability was guaranteed by statute or custom and how it was implemented in practice.

36. He would welcome a more detailed description of the judicial system and, in particular, clarification as to whether the Military High Court of Appeals mentioned in paragraph 11 (c) had political or civil jurisdiction and whether it could be considered equivalent to the Supreme Court in the common-law system.

37. Mr. MIKAILOV expressed satisfaction with Turkey's report, which was objective, precise and comprehensive. He welcomed the fact that Turkey had ratified all the European conventions on human rights, with the exception of the Additional Protocol to the European Human Rights Convention in respect of the death penalty.

38. The fact that only 15 policemen had been convicted in connection with 508 cases of torture allegations brought before Turkish courts, as stated in paragraph 76, showed that there was a discrepancy between legislation and practice. That discrepancy appeared to be the result of shortcomings in the judicial system.

39. Turning to paragraph 5 of the report, he asked what genuine and effective guarantees existed in respect of article 19 of the Constitution, which defined the conditions in which individuals suspected of having committed an offence could be arrested by decision of a judge.

40. In connection with paragraph 11 (a), he asked what the difference was in jurisdiction between the minor courts for petty offences and the courts of first instance, particularly as far as allegations of torture were concerned.

41. Noting, in paragraph 14, that Turkey had recognized on 28 January 1987 the competence of the European Commission of Human Rights to receive petitions from any person, non-governmental organization or group of individuals, he inquired how that decision was implemented in practice.

42. Associating himself with Ms. Chanet's questions on the duration of custody, he asked whether there was any plan to reduce the 15-day period applicable in cases of offences committed collectively, particularly in relation to the State Security Courts mentioned in paragraph 48. He pointed out that, in general practice, custody rarely exceeded 24 to 48 hours.

43. He asked what was meant in paragraph 51 by the word "unexceptionally" and requested information on the provision described in paragraph 70, whereby the courts must disregard evidence taken under torture or ill-treatment.

44. Mr. SORENSEN explained that, as a member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, he could not take part in the discussion.

45. The CHAIRMAN, speaking as a member of the Committee, expressed his appreciation of the informative report submitted by the Turkish Government. It provided a comprehensive view of the Turkish judicial system and showed that the country's legislation and Constitution offered sound guarantees and was in keeping with international standards. However, he regretted that the report had not provided sufficient information in conformity with the Committee's guidelines, particularly part I (f) and part II (b) and (c).

46. Paragraph 18 of the report appeared to indicate that torture was considered an offence under Turkish legislation only if its purpose was to extract a confession. That definition was not consistent with the much broader one contained in the Convention. He would welcome further clarification of that point.

47. Turning to paragraph 20, he asked whether Turkey's goegraphical reservation to the 1951 Convention on Refugees also applied to the Convention against Torture. He wished to know what measures had been taken by the Turkish authorities to guarantee that the principle of non-refoulement was applied in respect of non-European asylum-seekers. Various sources had alleged that in an attempt to force Iraqi refugees of Kurdish origin to return to Iraq against their will, the Turkish authorities had taken measures in the Kurdish refugee camps to restrict water, food and medical treatment, limit the right of refugees to work outside the camps and impose a curfew. He would like to know whether those allegations were true and for what reason the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organizations had been prevented from entering those camps.

48. Turning to paragraph 34 of the report, he asked how the Turkish authorities discharged their obligation under article 19/3 of the Constitution to prevent the escape of individuals suspected of having committed an offence.

49. Associating himself with Ms. Chanet's question on paragraph 39, he requested further explanations about the prosecution in Turkey of offences committed abroad by foreigners against other foreigners.

50. The information given in paragraphs 41 to 43 of the report on extradition treaties would not be in conformity with article 8 of the Convention unless that article was directly applicable in Turkey; was that the case?

51. With regard to paragraphs 45 and 79, he would welcome additional information on training programmes aimed at informing members of the police force about provisions against torture. Those programmes should be extended to include other concerned persons, such as prison, military and medical staff.

52. He associated himself with the questions on the duration of custody asked by other members and also wished to know the time-limit of solitary confinement.

53. In connection with paragraph 63, he asked how much compensation was paid to victims of torture. Referring to paragraphs 64 et seq., he associated himself with the questions asked by other members on article 15 of the Convention and said he wished to know how that article had been incorporated into Turkish legislation and whether it was applied in the courts, especially the military courts.

54. Like other members, he had been surprised to learn, in paragraph 76, that so few convictions had resulted from so many allegations of torture. In connection with the same paragraph, he asked what the shortcomings in the implementation of the Prime Minister's circulars had been and requested that copies of those circulars should be made available to the Committee. The penultimate sentence of the paragraph required clarification.

55. He asked for clarification concerning the interim decision taken by the military court referred to in paragraph 77.

56. He would welcome some information on the progress made in establishing the proposed parliamentary commission on human rights referred to in paragraph 78 and said he hoped that it would have produced practical results by the time Turkey submitted its next periodic report.

57. A particularly large number of allegations of torture had been communicated to the Committee not only by various non-governmental organizations, which were reliable sources and whose reports concurred, particularly SOS Torture, Amnesty International, Helsinki Watch, the Association of the Bar of the City of New York, but also by private individuals, opposition circles and Kurdish refugees. The most recent report by SOS Torture provided convincing evidence that torture was systematically being practised in Turkey and that the measures taken to prevent it were inadequate. He would like to know what the Turkish Government intended to do to improve those measures and to ensure that its country's legislation prohibiting torture was effectively implemented. The Committee's goal was not to sit in judgement, but to assist States Parties in taking steps to eradicate torture and, in that spirit, he congratulated the Government on the progress it had made so far and on its genuine desire to continue to move forward.

The meeting was suspended at 11.40 a.m. and resumed at 11.50 a.m.

Initial report of Ecuador (CAT/C/7/Add.7)

58. At the invitation of the Chairman, Mr. Santos and Mr. Apunte Franco, (Ecuador) took seats at the Committee table.

59. Mr. SANTOS (Ecuador) introduced the initial report (CAT/C/7/Add.7) of his country, whose profound commitment to the promotion of human rights as fundamental to peaceful coexistence and international security was reflected in its accession to virtually all the international instruments on human rights.

60. The report gave an overview of the Ecuadorian Constitution and legal system and demonstrated their compatibility with the provisions of the Convention against Torture, which were consistently defended by the Government, both in theory and in practice. Human rights education, training

and information for law-enforcement officials and members of the military were, moreover, being provided by the Government, the Ministry of Defence, the Ecuadorian Centre for Human Rights, the Latin American Association for Human Rights (ALDHU), the Ecuadorian Red Cross and the Ecuadorian Diplomatic Academy as a means of ensuring, in particular, that torture, one of the most perverse forms of human degradation, became a thing of the past and, in general, that human rights were properly perceived as being essential to the maintenance of social stability at a time of severe economic crisis which was having far-reaching consequences for Ecuador and for all developing countries.

61. He drew particular attention to the establishment, with the participation of the Catholic Church and ALDHU, of a high-level, inter-agency commission to monitor police procedures and investigate complaints of human rights violations and of the Special Commission of Inquiry, which was composed of lawmakers from all political parties represented in Congress and which had broad investigatory, administrative and educational functions in connection with complaints of human rights violations.

62. Needless to say, his Government would continue to co-operate with United Nations bodies in working for the full implementation of human rights and the eradication of torture in Ecuador, as well as the uncompromising defence of those rights in Ecuador and throughout Latin America as a whole. His country was fortunate in that it had what he would call "space for economic, social and cultural growth" and individuals enjoyed many opportunities for development. Nevertheless, serious disparities in income distribution in Ecuador made it essential to maintain the social dialogue and to take every possible step to preserve, and even extend to its neighbours, what was, after all, an oasis of peace in a region racked by social turmoil as a result of what had been referred to as the "lost decade".

63. Mr. GIL LAVEDRA (Country Rapporteur) welcomed the efforts being made in Ecuador to promote human rights and, more specifically, to eliminate the practice of torture. Unfortunately, however, the initial report provided scant information on the measures Ecuador had actually taken to give effect to its undertakings under the Convention and could not be said to comply to any great extent with the general guidelines adopted by the Committee for the presentation of such reports (CAT/C/4/Rev.1). He did not think that the Ecuadorian delegation would be able to deal at the present session with the many questions that were likely to be asked by the members of the Committee and feared that a supplementary report might be necessary. In any event, he would list some of the major questions prompted by his own consideration of the report.

64. In the first place, part I and paragraph 1, in particular, were by no means adequate as a description of the general legal framework into which the provisions of the Convention were incorporated: chapter and verse needed to be more clearly spelt out.

65. Paragraph 2 of the report failed to indicate whether Ecuadorian legislation contained provisions of wider application than those contained in the Convention.

66. Paragraph 3 should have gone into greater detail concerning procedures and mechanisms permitting applications for redress.

67. More detailed information should have been provided concerning the functioning and impact of the Tribunal of Constitutional Guarantees mentioned in paragraph 4.

68. Paragraph 5 mentioned and Mr. Santos had referred in his introduction to important educational and information activities - and they were to be welcomed. But how were such programmes organized and what was their scope?

69. Further information was certainly called for on the circumstances of the establishment of the Special Commission of Inquiry referred to in paragraph 7 and in Mr. Santos' introduction, as well as on its mandate and functioning.

70. It was also regrettable that part I of the report did not shed light on the question whether the provisions of the Convention could be applied directly or whether they had to be transformed into internal law or administrative regulations in order to be enforced; the existence or otherwise of remedies or rehabilitation programmes; and the actual situation with regard to the practical implementation of the Convention and difficulties affecting the fulfilment of obligations under the Convention.

71. Turning to part II of the report containing information on the articles in part I of the Convention, he asked how acts of torture, as defined in the Convention, were identified and dealt with in Ecuador's Penal Code and Code of Criminal Procedure. He had studied the annexes to the report and believed that more detailed information was called for.

72. In connection with article 2 of the Convention, it was important to be sure that acts of torture were indeed being prevented and that neither exceptional circumstances nor an order from a superior officer or public authority might be invoked in Ecuador as a justification of torture.

73. The blanket statement in paragraph 11 that "The Penal Code and the Code of Criminal Procedure exist to ensure the application of these provisions of the Constitution" was far from adequate. Questions relating, for example, to authority to arrest, the duration of pre-trial detention, the rules governing incommunicado detention, the guarantee of medical examinations and, in general, issues of a practical, procedural and functional nature should be reported on in far greater detail. He had also noted that the documents annexed to the report revealed a number of contradictions, for example, with regard to the length of time a person might be held before charges were brought or cases where persons detained were denied the right to communicate with their relatives. The relationship in such matters between the authority of police officers and that of magistrates or judges needed to be spelt out more clearly.

74. Reference was made in paragraph 14 to the Aliens Act and the Regulations on Aliens; how did their provisions satisfy the requirements of article 3 of the Convention?

75. He also asked how, as claimed in paragraphs 18 and 19 of the report, title I, article 5, of the Penal Code and article 3 of the Code of Criminal Procedure satisfied the requirements of article 5 of the Convention, which

dealt with much more than merely territorial concerns. As to articles 6 to 9 of the Convention, it was yet again necessary to develop much further the laconic statements in the report that their provisions were covered under the Constitution and other national legal instruments.

76. With regard to articles 10, 11 and 12 of the Convention, he again stressed the importance of obtaining further information concerning human rights education in Ecuador. Paragraph 26 of the report referred to "the reorganization of the Criminal Investigation Department" and he would like more details on the establishment and operation of that body and the reasons why its reorganization had been necessary.

77. On the issues of complaints, redress and compensation covered by articles 13 and 14 of the Convention, he asked how the different rights were guaranteed and exercised and how satisfaction was accorded.

78. Article 15 of the Convention dealt with the issue of ensuring that any statement made under torture was not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement had been made. However, paragraphs 32 and 33 of the report supposedly demonstrated that effect was being given to that provision in Ecuador, but, in fact, they were only marginally relevant.

79. In conclusion, he believed that, since the Committee's task was to determine what was actually being done to eliminate Torture in the States Parties to the Convention, it would be appropriate to request the Ecuadorian authorities to submit a supplementary report replying to and clarifying questions and issues such as the ones he had raised.

80. Mr. SORENSEN (Alternate Country Rapporteur) welcomed Ecuador's report, which, despite the many recent changes that had taken place in that country, the Government had had plenty of time to prepare. Unfortunately, the report did not give a proper picture of the legal system in Ecuador, of how the Convention was incorporated into Ecuadorian law or of the obstacles encountered in its implementation. The efforts being made by the Government of Ecuador to implement article 10 of the Convention through a national human rights education programme were greatly appreciated, but it was very difficult to discuss the situation in Ecuador on the basis of the present report and it would be useful if a supplementary report prepared in accordance with the Committee's guidelines and including information on all the points raised by Mr. Gil Lavedra could be submitted for consideration by the Committee in approximately one year's time. It should be borne in mind that the Committee had received a considerable number of allegations of torture in Ecuador from non-governmental organizations.

81. Ms. CHANET associated herself with the previous speakers' comments on Ecuador's initial report. Its brevity was surprising in view of the changes that had recently taken place in that country. Ecuador was certainly not lagging behind in the campaign against torture and everything that was being done to improve the situation should be reported. Of course, not all problems could be solved overnight, but the Government of Ecuador could rest assured of the Committee's full co-operation. Only a supplementary report could give an adequate idea of the efforts being made. For example, some details on the Special Commission of Inquiry to investigate complaints of ill-treatment would

be very helpful. The Committee needed to have information on its composition, on how independent it was, on how its members were appointed, on how complaints were processed and on what authority it had over the Government.

82. Likewise, it would be helpful to have some information on how the Penal Code and the Code of Criminal Procedure ensured the application of the guarantees provided for in article 19 of the Constitution and whether the definition of the term "tormento" given in paragraph 143 of the Penal Code was in line with the definition of the term "torture" contained in article 1 of the Convention. In paragraph 16 of the report, reference was made to articles 203 to 205 of the Penal Code relating to the extortion of statements from prisoners, but the relationship with article 143 of the Penal Code was not clear.

83. She shared Mr. Gil Lavendra's concern about paragraph 14 of the report. Precisely how did the Aliens Act and the Regulations on Aliens guarantee the implementation of article 3 of the Convention? For example, it was necessary to know whether the principle governing extradition also applied to refoulement. She also shared Mr. Gil Lavedra's concern about paragraphs 18 and 19 of the report relating to the establishment of universal jurisdiction. It was difficult to see how the information given in paragraph 18 could meet the requirements of articles 5 and 7 of the Convention. The Committee needed to know whether a person involved in a case of torture which had not taken place in Ecuadorian territory and in which neither the alleged offender nor the victim was an Ecuadorian national could be brought to trial in Ecuador.

84. The information given in paragraph 20 with regard to the rules governing the jurisdiction of the criminal courts of Ecuador was also unclear. The Committee needed to know the hierarchical relationship between the rules of domestic law and the rules laid down in international conventions. The relationship between the information given in paragraph 24 of the report and the requirements of article 9 of the Convention, which dealt with mutual judicial assistance, was also difficult to understand. Some further particulars of Ecuadorian practice in that regard would be appreciated. Moreover, it was disappointing to note that only two not very specific paragraphs of the report (paras. 25 and 26) were devoted to three very specific articles of the Convention (arts. 10, 11 and 12). Detailed information on custody, its duration, how relatives were informed of a detainee's arrest and the conditions in which a person could be held incommunicado was needed.

85. Mr. Sorensen had referred to the information on torture in Ecuador that had been received from non-governmental organizations. She herself would like to know the Ecuadorian delegation's views on the events that had occurred in January and March 1990 in which a prison governor had publicly denounced the Criminal Investigation Department for torturing prisoners in his prison. The prison governor had subsequently been threatened with death and had had to resign. What action had been taken in that case? What grounds had the prison governor had for making such accusations?

86. Lastly, she would like to have some information on the procedures for making complaints to the authorities mentioned in paragraph 27 of the report and on the number of complaints received, the percentage which had been found admissible and the compensation that had been paid.

87. Mr. KHITRIN expressed regret that Ecuador's initial report was so brief and that the authors had not followed the Committee's guidelines for the form and contents of reports. A great many questions remained outstanding. Mr. Gil Lavedra had made a thorough review of the report and had suggested that a supplementary report was required. Some of the questions raised might, however, be answered at the Committee's next meeting. He would be grateful if conditions of detention could be dealt with in the supplementary report.

88. Mr. MIKHAILOV said he fully agreed with Mr. Gil Lavedra's suggestion that a supplementary report be submitted. All the main questions he had wished to ask had already been asked by other speakers.

89. Mr. BURNS said that he also agreed with the views expressed by previous speakers. He would, however, be grateful if the Ecuadorian delegation could explain in some detail how judges were appointed, the hierarchical relationship between the various courts, the independence of the judiciary, how many lawyers there were in the country, the basis on which prosecutors were appointed and who was responsible for supervising them.

90. Mr. DIPANDA MOUELLE said that he fully agreed with previous speakers that a supplementary report should be requested. A further discussion at the Committee's next meeting would, however, also be desirable.

91. The CHAIRMAN, speaking as a member of the Committee, said that Ecuador's initial report, even when supplemented by Mr. Santos' introductory statement, was insufficient. It was not clear how international instruments were incorporated into Ecuadorian law and no information was given on investigations of cases of torture in Equador. The commendable measures taken by the Government had apparently not yet produced their full effects. Statistics and precise information were required, since, in paragraph 5 of the report, it was recognized that torture was still taking place, although the Government was endeavouring to eliminate it.

92. Like Mr. Gil Lavedra and Ms. Chanet, he would like to know whether the definition of torture contained in article 1 of the Convention was fully covered in Ecuadorian law. He was also unsure whether the Aliens Act and the Regulations on Aliens mentioned in paragraph 14 of the report were in conformity with article 3 of the Convention. In addition, he had doubts about the provisions relating to cruel, inhuman or degrading treatment referred to in paragraph 16 of the report. Other points in respect of which he felt perplexed had already been raised by previous speakers.

93. Paragraph 24 of the report contained a fine statement, but it gave absolutely no information on the implementation of article 9 of the Convention. The instructions given to law enforcement officials, mentioned in paragraphs 25 and 26 of the report, seemed very vague; if they existed in writing, it would be very useful for the Committee to have copies. The same applied to the contents of articles 11 and 12 of the Convention, in respect of which no detailed information was given in the report. Paragraph 27 of the report related to the right of petition, which was not exactly what was covered by article 13 of the Convention. With regard to paragraphs 29 to 31 of the report, he would like to know what compensation actually consisted of.

Was there any provision for rehabilitation measures, for example? Was the family compensated if a victim of torture died? How many cases had there been in recent years? Moreover, it was difficult to see how article 15 of the Convention was incorporated into Ecuadorian legislation.

94. The Committee's guidelines required that, when a text was not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it and that the text of national legislative provisions relevant to the implementation of the Convention should be quoted in the report. As a result of that arrangement, the texts concerned were translated into the Committee's working languages, thereby making its work much easier. The Ecuadorian delegation might wish to bear that in mind.

95. In short, what was most lacking in the report was factual information. For instance, it would be particularly interesting to have information on specific cases of torture, their frequency, the kind of officials involved, the number of complaints made, investigations undertaken, of sentences handed down, with examples, and cases in which compensation had been paid and the amount thereof, as well as information on the implementation of the principles of non-refoulement and universal jurisdiction. Since the report did not give a full picture of the legal situation in Ecuador, he suggested that the Committee should request the delegation of Ecuador to submit a supplementary report in accordance with the Committee's guidelines and to reply to questions on it at a subsequent session. In preparing the supplementary report, the Ecuadorian authorities would find the questions put by the members of the Committee in the summary record of the present meeting. He asked the Ecuadorian delegation whether it would be in a position to submit a supplementary report by the end of February 1991 in time for it to be considered at the Committee's next session in April 1991.

96. Mr. SANTOS (Ecuador) said that the comments made on his country's initial report were substantive and that his delegation now had a sound idea of the kind of report required of a State party. Ecuador had a rich legal tradition, supported by a large number of lawyers, and it would be able to supply a supplementary report in accordance with the Committee's guidelines in time for the Committee's next session in April 1991. However, in view of the time needed to prepare replies to the complex questions asked, his delegation would prefer not to appear before the Committee again at the next meeting.

97. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to follow that procedure; the questions which members had asked would be answered in the supplementary report.

It was so decided.

Mr. Santos and Mr. Apunte Franco (Ecuador) withdrew.

The meeting rose at 1.05 p.m.

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COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 62nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 14 November 1990, at 3 p.m.

Chairman: Mr. VOYAME

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Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Turkey (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

INITIAL REPORT OF TURKEY (CAT/C/7/Add.6) (continued)

1. At the invitation of the chairman, Mr.Duna (Turkey) and other members of his delegation took seats at the Committee table.

2. Mr. DUNA (Turkey) said that he would be able to reply only briefly to the very many questions that had been put to him. First of all, in connection with the figure of 5,000 prisoners of opinion, he noted that Amnesty International considered a prisoner of opinion to be any detainee who had been sentenced for an offence against the State. That definition could be applied only to the small number of persons who had been tried on charges covered by articles 141 and 142 of the Turkish Penal Code. However, since those articles were soon to be amended soon, a large number of the persons concerned had been released. Nevertheless, approximately 3,000 persons were still being detained or had been sentenced for having committed acts of violence, particularly acts of terrorism, over the past 10 years.

3. The judiciary comprised the following tribunals and courts: the courts of general jurisdiction, military courts, the courts martial, the State Security Court, and the Council of State. There was nothing specific to report about the courts of general jurisdiction. Military courts tried only military personnel. The courts martial had jurisdiction only during a state of emergency or to try cases that had subsequently remained pending. The State Security Court was a court of special jurisdiction which tried only cases involving security problems. The Council of State was the supreme administrative court which established the responsibility of the State and, where necessary, ordered compensation to be paid to victims. The judges and prosecutors of all courts were appointed by the Higher Council of the Judiciary. All judges were independent and could not be removed.

4. The definition of torture contained in the Convention against Torture was recognized in Turkish law and reflected in articles 243 and 245 of the Penal Code, which respectively declared acts of torture and ill-treatment to be punishable offences.

5. Parliament currently had approximately 270 death sentences before it. Since November 1984, no condemned person had been executed. Corporal punishment did not exist.

6. Furthermore, the punishment that could be imposed on perpetrators of torture varied according to the seriousness of the offence and could amount to as much as 10 years' imprisonment. Moreover, the penalties provided for in the Penal Code could be doubled. If the perpetrator of an act of torture could not be identified, the State became responsible. An action for compensation could be brought against the Ministry of the Interior. When torture occurred, the public prosecutor could also open an inquiry as a matter of routine.

7. Incommunication did not exist as an official penalty. In prisons it had been only a disciplinary measure which had now been abolished.

8. Extradition was a technical matter that depended on the agreements concluded on the subject. He nevertheless considered that article 8 of the Convention was directly applicable in Turkey.

9. Law enforcement officers could resort to force in accordance with the provisions of the Constitution.

10. The situation in prisons depended on the extent of the resources available to the country. He nevertheless assured members of the Committee that his Government was trying to improve prison conditions, and in that connection referred them to the detailed information supplied in document E/CN.4/Sub.2/1990/20 of 19 July 1990. He also affirmed that there had been no case of death under torture. When a person died in prison, an inquiry was immediately made and, if necessary, an autopsy was carried out.

11. The oath sworn by public officials was concerned with respect for human rights. If public officials were guilty of violating those rights, they were punished according to the nature of the offence.

12. So far 13 individuals had availed themselves of their right to submit applications to the Court of Human Rights in Strasbourg under the European Convention on Human Rights.

13. With regard to the question of old or new evidence referred to in paragraph 70 of the report, no distinction was made in Turkey regarding confessions extorted under torture.

14. It was quite untrue that Turkey was seeking to compel the Iraqi citizens housed in temporary reception centres to return to their country. For the past two years Turkey had been appealing to all the parties interested in the fate of those displaced persons to shoulder their responsibilities and to find means of resettling them, but so far its appeals had remained unheeded. Moreover, the reception centres were open and Turkey was working together with UNHCR. An inquiry had been carried out among the approximately 27,000 displaced persons of Iraqi nationality, in the course of which the latter had indicated the countries where they would like to be resettled. Their wishes ought to be taken into account. If the Committee so desired, the Turkish Government would send it the statements made by the persons concerned in respect of their living conditions.

15. With regard to the duration of detention for persons involved in collective offences, he explained that sometimes the number of persons involved was in fact taken into account, but that, according to a survey carried out for the period 1984-1989, the question was one that concerned only 1.7 per cent of all detainees.

16. Forensic physicians were fully independent. They underwent a special four-year training, had their own system of grades and their own organization.

17. The state of emergency in force since July 1987 applied to 10 provinces - in other words, to approximately 4.5 million inhabitants out of a total population of some 60 million.

18. In connection with paragraph 76 of the report, he explained that the Minister of the Interior had published a further circular for clarification purposes. Since then, no complaint had been received. Lawyers could meet their clients. The text of the Prime Minister's circular was contained in document E/CN.4/1990/17.

19. Article 15 of the Convention was fully applicable in Turkey, and any judgement not in conformity with it could be overturned by the higher courts.

20. All trials were public, including those before the State Security Court.

21. Responsibility for applying article 19, paragraph 3, of the Constitution, concerning the arrest of suspects and referred to in paragraph 34 of the report, lay with independent judges.

22. Detention periods were to be shortened under the bill of amendments to the Code of Criminal Procedure mentioned in paragraph 50 of the report.

23. In reply to the question asked regarding the 508 alleged cases of torture brought before the courts, mentioned in paragraph 76 of the report, he indicated that in 1989 some 500 alleged cases of ill-treatment involving approximately 750 public servants had been referred to the judicial authorities. Of that total, 230 had been dismissed after an inquiry, and there had also been 67 acquittals. In 72 cases it had been decided not to prosecute. However, 15 public servants had been found guilty and duly sentenced. At present, 354 cases were pending. In 392 cases that had been tried, only 15 persons had been sentenced. It should, however, be pointed out in that connection that, precisely on account of the impetus given to the campaign against torture, many detainees, particularly terrorists, falsely alleged that they had been tortured.

24. In conclusion, he stressed that although tribute must be paid to the non-governmental organizations, they were not always devoid of prejudice. In that connection he deplored the campaign waged by Amnesty International against Turkey by disseminating, to travel agencies, pamphlets containing allegations of torture. That kind of campaign went far beyond Amnesty International's humanitarian mission. Turkey was an open country which was making a great effort to combat torture and was concerned about the welfare of its inhabitants.

25. Mr. BURNS said that he would like to have some information on the status of prosecutors and the authority to which they were responsible.

26. Mr. DUNA (Turkey) replied that prosecutors had no special status. They were responsible to the Higher Council of the Judiciary, which was also the body responsible for appointing them.

27. Mr. KHITRIN asked what precise role prosecutors played in enforcing the law and ensuring respect for the freedoms of citizens, how many detainees there were at present in Turkish prisons, and who was responsible for law enforcement in places of detention.

28. Mr. DUNA (Turkey) replied that law enforcement was the responsibility of the security forces. Prosecutors were responsible for opening and conducting investigations and for initiating legal proceedings, as in most other countries

in the world. They enjoyed no special power or status. The number of detainees in Turkish prisons was at present approximately 50,000.

29. Ms. CHANET pointed out that the functions of government prosecutors were not necessarily the same in all countries. Furthermore, whereas in most countries they were removable, since they received their instructions from the Ministry of Justice and therefore from the Government, in Turkey they were irremovable, according to paragraph 10 of the report. That was an unusual situation, which might be due to the fact that they had a particular role to play within the judiciary. She would therefore appreciate further information on that point, as well as on the general status of the judiciary in Turkey. She also asked how many persons sentenced to death were at present awaiting execution in Turkey.

30. Mr. DUNA (Turkey) replied that the functions of judges and prosecutors were set forth in articles 138 to 140 of the Constitution, the text of which he could make available to Ms. Chanet.

31. The CHAIRMAN pointed out that the question concerning the number of persons sentenced to death had already been answered. It was his understanding that the cases of approximately 270 persons sentenced to death were currently being considered by Parliament, which would mean that they had submitted mercy petitions. He would like some information on the position of those who had not submitted such petitions.

32. Mr. DUNA (Turkey) explained that in Turkey a death sentence could not be carried out without the approval of Parliament. It was Parliament that decided in the last resort.

33. Mr. GIL LAVEDRA asked whether the bill of amendments to reduce the detention period, which was at present very long, also concerned emergency legislation.

34. He was, moreover, surprised at the disproportion between the number of allegations of torture and the number of sentences imposed on policemen for committing acts of torture. He wondered whether that was due to failure to prove that the allegations were true or failure to identify the perpetrators of the acts complained of.

35. He was also surprised that, as stated in paragraph 11, subparagraph (c), of the report, military courts could also try civilians. Only military personnel could commit military offences and, by definition, military courts tried only military personnel. He would therefore appreciate further information on that point.

36. With regard to article 19 of the Constitution, referred to in paragraph 5 of the report, he would like to know in precisely which cases a person's arrest or detention was not communicated to his family, since the reasons given in paragraph 5, subparagraph (c), were not very clear, and what authority was responsible in the matter. Finally, was it the prosecutor's office or the judge that decided on a prolongation of detention and on incommunication, which, according to the legislation in force in Turkey, could last up to one month?

37. Mr. DUNA (Turkey) confirmed that the bill to amend the legislation in question also covered emergency legislation.

38. The difference between the number of complaints made and the number of sentences handed down for torture was explained by the fact that only cases already tried were indicated. There were still 354 persons charged with torture who had not yet been tried.

39. He could also assure Mr. Gil Lavedra that the military courts were not competent to try civilians. What was stated in paragraph 11, subparagraph (c), of the report applied only to civilians who had committed military offences during their military service and who had not yet been tried.

40. Lastly, the families of persons arrested or detained were informed first of all by the police and then by the prosecutor, and only the judge was empowered to prolong detention.

41. Mr. DIPANDA MOUELLE asked before what body public servants swore their oaths.

42. Mr. DUNA (Turkey) replied that public servants swore their oaths before the bodies which appointed them to their respective posts.

43. The CHAIRMAN, speaking as a member of the Committee, asked whether Turkey had any human rights training programmes for prison, military and medical personnel, since paragraph 45 of the report dealt only with training for policemen. He would also like to know the approximate amount of damages paid to victims of torture and whether there was any provision for other forms of compensation, such as rehabilitation programmes. Lastly, he requested more detailed information on the programme of work envisaged for the parliamentary commission on human rights referred to in paragraph 78 of the report, and asked when the work would be likely to result in a revision of legislation or structural modifications.

44. Mr. DUNA (Turkey) said that training was in fact provided not only to law enforcement officers but also for prison doctors and warders. The resources allocated to such activities were, of course, limited, but the prison authorities were doing their best to train their staff.

45. It was difficult to indicate the exact amount of damages paid to victims of torture, but he wished to assure the Chairman that it was satisfactory and proportionate to the seriousness of the injury suffered. On the other hand, Turkey had no network of voluntary organizations concerned with the rehabilitation of torture victims. The parliamentary commission on human rights would concentrate mainly on the preparation of new laws, and he hoped that in four years' time it would be possible to provide the Committee with more detailed information on the results of its work.

46. Mr. BURNS thanked the Turkish delegation for its frank replies to the questions that had been put to it by members of the Committee and that reflected the latter's preoccupations. The report and the oral explanations presented showed that the Turkish Government had clearly embarked upon a process of legislative reform. Nevertheless, in order to occupy its appropriate place within the community of civilized nations, Turkey should take steps to put an end to the practice of torture, which was still

widespread in the country. The Turkish Government was aware of the concern which that situation was arousing within the international community and was endeavouring to remedy it. It was to be hoped that its efforts would lead to concrete results which should be reflected in Turkey's subsequent report. For its part, the Committee would continue to pay close attention to what was happening in Turkey, in the hope that the problem would finally be eliminated and that all persons responsible for committing acts of torture would be duly punished.

47. The CHAIRMAN considered that Turkey's initial report and the oral explanations given by the Turkish delegation were generally satisfactory from the institutional and legal standpoints, although improvements were still possible in certain fields. Nevertheless, torture continued to occur in Turkey, and the Turkish Government must therefore be encouraged to make all the necessary efforts to ensure that torture had completely disappeared in four years' time. He again thanked the Turkish delegation for co-operating with the Committee with a view to enabling it to perform its work successfully.

48. The members of the Turkish delegation withdrew.

The meeting rose at 4.15 p.m.